

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAFAEL CABRAL,

Petitioner,

vs.

Case No. 05-CV-73437
HON. GEORGE CARAM STEEH
Crim. No. 93-CR-81315-02

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING SECOND § 2255 PETITION
PURSUANT TO § 2244(b)(3)(A)

Petitioner Rafael Cabral filed a second 28 U.S.C. § 2255 motion on September 7, 2005 seeking to vacate, set aside, or correct his July 25, 1997 sentence of 220 months imprisonment following a plea-based conviction of conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846. According to this second motion, petitioner's initial August 2, 1999 petition for § 2255 relief was denied on December 29, 2000. "Under the gatekeeping requirements of the Antiterrorism and Effective Death Penalty Act of 1996 . . . , a federal prisoner must obtain permission from the court of appeals in order to submit a second or successive § 2255 motion to the district court." In re Clemons, 259 F.3d 489, 491 (6th Cir. 2001) (citing 28 U.S.C. § 2244(b)(3)(A)¹). The current petition for § 2255 relief is not accompanied by an order issued by the Sixth Circuit

¹ "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

Court of Appeals authorizing this court to consider petitioner's second § 2255 application.

Accordingly,

Petitioner's Cabral's September 7, 2005 motion for § 2255 relief is hereby DISMISSED, without prejudice, for lack of authorization under 28 U.S.C. § 2244(b)(3)(A) to consider the motion.

SO ORDERED.

s/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

Dated: September 14, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on September 14, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee

Secretary/Deputy Clerk